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In the Supreme Court  
OF THE  
United States

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OCTOBER TERM, 1943

No. 120

OLAF OSWALD,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI**

to Be Directed to the United States Circuit Court of Appeals  
For the Ninth Circuit to Bring Before This Honorable Court the  
Case of United States of America, Petitioner v. Honorable  
Delbert E. Metzger, Judge of the United States District Court  
For the Territory of Hawaii, and Olaf Oswald, Reporter of  
Said Court, Respondents, and Numbered Therein No. 10,291

and

**BRIEF IN SUPPORT THEREOF.**

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*To the Honorable Harlan Fiske Stone, Chief Justice  
of the United States, and to the Associate Justices  
of the Supreme Court of the United States:*

The petitioner above named hereby petitions this  
Honorable Court for a Writ of Certiorari to be di-

rected to the United States Circuit Court of Appeals for the Ninth Circuit to bring before this Honorable Court the case pending therein entitled: "United States of America, Petitioner v. Honorable Delbert E. Metzger, Judge of the United States District Court for the Territory of Hawaii, and Olaf Oswald, Reporter of said Court, Respondents, No. 10,291", and in support of said petition respectfully shows that:

## I.

### **OPINION OF THE COURT BELOW.**

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit is printed in full at pages 35-38 of the transcript of record herein to which reference is hereby made.

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## II.

### **SUMMARY OF THE MATTER INVOLVED.**

Petitioner is the official reporter of the United States District Court for the Territory of Hawaii and has been such since November 1, 1931 (Tr. 32).

The United States of America, plaintiff in a certain proceeding in eminent domain, tried before said Court, filed in said Court a motion for an order requiring petitioner to furnish a transcript of said proceedings in accordance with Rule 129 of the rules of said Court (Tr. 15-16). Said rule defining the duties and compensation of the Court's reporter in addition to salary allowed by law had existed in said Court in substance

for over forty years (Tr. 31). The rule was amended to its present form on March 26, 1934 (Tr. 33) and subsequent to the effective date of the Rules of Civil Procedure prescribed by the Supreme Court of the United States in the District Court of Hawaii, the judges of that district re-examined said Rule 129 of that Court in connection with said Rules of Civil Procedure and determined that said rule was lawful, fit and proper and should continue without change (Tr. 31).

The District Court in response to said motion made its order granting the motion directing the preparation of the transcript in accordance with the provisions of said Rule 129, to-wit, when and after satisfactory arrangements were made with the petitioner, or he was paid in advance the sum provided by the rule (Tr. 17).

The United States of America, plaintiff, in said eminent domain proceeding thereupon sought a writ of mandate from the United States Circuit Court of Appeals for the Ninth Circuit, compelling the district judge to order petitioner to furnish and compelling petitioner to furnish the transcript without additional compensation provided for by said rule and order of the District Court (Tr. 3-5).

The United States Circuit Court of Appeals for the Ninth Circuit declined to grant the writ against the district judge, but granted the writ as prayed for against petitioner (Tr. 38).

### III.

#### **JURISDICTION.**

The writ was issued against petitioner January 9, 1943. Petitioner's petition for rehearing was denied by the United States Circuit Court of Appeals for the Ninth Circuit on April 5, 1943. Enforcement of the writ has been stayed until after this Court shall have disposed of this petition (Tr. 45).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (28 U.S.C.A. 347).

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### IV.

#### **STATUTES AND FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED.**

31 Stat. 158, as amended, 48 U.S.C.A. 644; Revised Statutes 1765, U.S.C. Section 70; The Act of Congress of June 19, 1934, 48 Stat. 1064, 28 U.S.C.A. 723b; Constitution of the United States, 5th Amendment.

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### V.

#### **QUESTIONS PRESENTED.**

(1) Do the Rules of Civil Procedure prescribed by the Supreme Court of the United States pursuant to the Act of Congress of June 19, 1934, control over earlier statutes in conflict therewith, and provide a

general uniform procedure in all the District Courts of the United States?

(2) Can an officer of the District Court of the United States be compelled to furnish to the Executive Branch of the Government, without just compensation, additional services to those required by the terms of his existing employment?

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## VI.

### **REASONS RELIED UPON FOR ALLOWANCE OF WRIT OF CERTIORARI.**

The issues are simple but the general importance of the questions involved are apparent from their mere statement.

The questions here involved affect the uniformity of the procedure sought to be established by the Rules of Civil Procedure prescribed by the Supreme Court of the United States pursuant to the Act of Congress of June 19, 1934, and the constitutional guarantee provided by the 5th Amendment of the Constitution of the United States.